

(916) 445-3237

May 5, 1983

Mr. Frank C. Seeley  
Riverside County Assessor  
P. O. Box 907  
Riverside, CA 92502

Attention: Mr. James J. Brzytwa  
Supervising Appraiser  
Identification Division

K Real Property Enterprises

Dear Mr. Brzytwa:

Thank you for your prompt response to my request for additional information. From what you have provided, it appears that the transfers of interests in the property in question all transpired within a short period of time. On January 12, 1982, the K Family Trust, Clay, and Janice, as trustors, became tenants in common with two other trusts, each having an undivided one-third interest in the subject property. On February 10, 1982, Clay as Trustee of the K Family Trust, granted to Clay IV, and to Katherine each a .4% interest in the property. Simultaneous with the recordation of this transfer, a certificate of limited partnership was filed. On February 19, 1982, a grant deed was recorded showing the transfer of the interests of the K Family Trust, C. IV, and Katherine to the K Real Property Enterprises.

Your inquiry is concerned with the latter of the two transfers in February, 1982. However, it is advisable to examine both transactions in chronological order, beginning with the one dated February 10, 1982. By its terms, the trust transferred to Clay, IV and to Katherine each .4% interest, retaining 99.2% interest. A "de minimus" provision is provided in Property Tax Rule 462(b)(2)(C) which states that there shall be no change in

ownership if the transfer of a tenancy in common interest is 5% or less and if the value of the transferred interest is less than \$10,000. This criteria was clearly met in this transaction and therefore is excluded as a change in ownership.

As to the transfer on February 19, 1982, the above "de minimus" provision is clearly inapplicable since 100% of the tenancy in common interest was transferred to the partnership. Looking to the next specific rule for application, Rule 462(j)(5)(A) provides:

"Except as provided in (2)(B), when real property is contributed to a partnership or is acquired, by purchase or otherwise, by the partnership there is a change in ownership of such real property, regardless of whether the title to the property is held in the name of the partnership or in the name of the partner(s), with or without reference to the partnership. Except as provided by (2)(B), the transfer of any interest in real property by a partnership to a partner or any other person or entity constitutes a change in ownership." (Emphasis added.)

As illustrated above, unless a transaction can come within the exclusion specified in (j)(2)(B), the transfer is a change in ownership. This subsection states:

"Transfers of real property between separate legal entities or by an individual(s) to a legal entity (or vice versa), which result solely in a change in the method of holding title and in which the proportional ownership interests in the property remain the same after the transfer. (The holders of the ownership interests in the transferee legal entity, whether such interests are represented by stock, partnership shares, or other types of ownership interests, shall be defined as 'original co-owners' for purposes of determining whether a change in ownership has occurred upon the subsequent transfer(s) of the ownership interests in the legal entity.)"

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Since the definition of "proportional ownership interests" is the crux of your inquiry, we must examine the Corporation Code to arrive at a proper answer. In your letter of March 16, 1983, you advocate the application of Section 15026 as being definitive of this matter, since it provides that a partner's interest is "his share of the profits and surplus...." It has been suggested that this section is inappropriate since the section you cite is from Title 2, Chapter 1, Article 5, of the Code and applies the provisions of the Uniform Partnership Act, as adopted in California, pertaining to partnerships in general to a limited partnership, a decidedly different entity. We believe it is more appropriate to apply the provisions of Title 2, Chapter 2, of the Code containing provisions of the Uniform Limited Partnership Act to this situation. Section 15518 states that a "limited partner's interest in the partnership is personal property". Next, Section 15514 provides that limited partners may allocate among themselves priorities regarding compensation, return of contributions, or any other matter. There are also significant distinctions between the two types of entities regarding priorities in dissolution. The most notable is the juxtaposition of priority in return of capital. In Section 15040, dealing with general partnerships, return of capital is of higher priority than a distribution of profit. In Section 15523, profits are distributed before the return of capital. This indicates that profit shares are more indicative of ownership than capital contributions.

Accordingly, we believe that the "proportional ownership interests" must be measured in this limited partnership by comparing the capital investment percentage against the distribution of profit percentage. They are not the same. Therefore, under Property Tax Rule 462(j)(5)(A), cited above, since the proportional ownership interests, measured by profit, have changed as a result of the two-tiered distribution scheme in Annex B of the agreement, the exclusion specified in (2)(B) is not available. The K transaction is therefore taxable as a change in ownership.

If further explanation would be helpful or if additional information becomes available, please do not hesitate to contact this office.

Very truly yours,

Gilbert T. Gembacz  
Tax Counsel

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